IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9474 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHOR RAMCHANDRA SAVLANI

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR UDAY BHATT Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/10/2000

ORAL JUDGEMENT

1. The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of Inida, challenged the legality and validity of an order of detention dated 1.7.2000, Annexure-A, in respect of petitioner passed by respondent no. 2 in respect to

detenu in exercise of his powers conferred upon him under sec. 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short 'the Act').

2. As per the papers of grounds of detention, the detenu is a 'bootlegger' within the meaning of sec. 2(b) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, to arrive at a subjective satisfaction, the detaining authority has placed reliance on two prohibition cases lodged in Gandhidham POlice Station of which a reference is made in the grounds of detention. He has also placed reliance on statements of two anonymous witnesses whose identity has not been disclosed by claiming privilege under sec.9(2) of the Act and thereafter the detaining authority has passed an order of detention on 1.7.2000, which is challenged in this petition.

3. Though rule has been served on all the respondents, each of them have not filed affidavits-in-reply controverting the grounds stated in memo of this petition.

4. Ms. Subhadraben Patel learned advocate for the petitioner has argued that the detaining authority has placed reliance on the statements of two anonymous witnesses of which both the statements were recorded on 6.6.2000 which appears to have been verified by Sub-Divisional Police Officer, Anjar, Camp at Gandhidham. She has argued that this is a clear cut case in which it can be said that the detaining authority has not applied his mind because the statement on which he has placed reliance ought to have been verified by him personally. Instead of it, he has entrusted this duty to Sub-Divsional Police Officer, Anjar. Ms. Subhadraben Patel has further argued that if we look to the second statement dated 6.6.2000, which is at page 34-35, we find that the said statement was recorded on 6.6.2000, while it was verified on 16.3.2000 about three months before recording of statement which is not possible because before three months in absence of statement, how it could be verified. Thus, this is a case, in which privilege claimed under sec. 9(2) of the Act is not claimed according to law and therefore, the order of detention is illegal and bad in law and required to be quashed and set aside.

5. In view of what is stated hereinabove, this petition is allowed. The impugned order of detention

dated 1.7.2000 passed by respondent no. 2 in respect of detenu is set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any custody for any criminal case or proceedings. Rule is made absolute. Direct service is permitted.

(H.H. MEHTA, J.)

mandora/